

Update: Criminal Procedure Monograph 6—Pretrial Motions (Revised Edition)

Part 2—Individual Motions

6.29 Motion to Withdraw Guilty Plea

Insert the following case summary at the bottom of page 66:

Doubt about the veracity of a defendant's nolo contendere plea, by itself, is not an appropriate reason to permit the defendant to withdraw an accepted plea before sentencing. *People v Patmore*, ___ Mich App ___, ___ (2004). In *Patmore*, the defendant moved to withdraw his no contest plea on the basis that the complainant had recanted her preliminary examination testimony on which the defendant's plea was based.

A defendant who wishes to withdraw his no contest plea before sentencing must comply with the requirements of MCR 6.310(B). Unless claiming an error in the plea proceeding itself, the defendant has the burden of showing that withdrawal of the plea is in the interest of justice; that is, the defendant must show that there is a fair and just reason for withdrawal. MCR 6.310(B); *Patmore, supra* at ___. If the defendant satisfies this burden, then the prosecution must establish that substantial prejudice would result if the defendant was permitted to withdraw his plea. The *Patmore* Court explained:

“In keeping with this standard, we believe that for recanted testimony, which provided a substantial part of the factual basis underlying a defendant's no-contest plea, to constitute a fair and just reason for allowing the defendant to withdraw his plea, at a minimum, the defendant must prove by a preponderance of credible evidence that the original testimony was indeed untruthful. If the defendant meets this burden, the trial court must then determine whether other evidence is sufficient to support the factual basis of the defendant's plea. If the defendant fails to meet this burden or if other evidence is sufficient to support the plea, then the defendant has not presented a fair and just reason to warrant withdrawal of his no-contest plea. Even if the defendant presents such a fair and just reason, prejudice to the prosecution

must still be considered by the trial court [internal citations omitted].” *Patmore, supra* at ____.

Because no Michigan case law involved the circumstances presented in *Patmore* (recanted testimony in the context of a defendant’s motion to withdraw a nolo contendere plea), the Court of Appeals noted that recanted testimony in the context of a defendant’s motion for new trial is generally regarded with suspicion and considered untrustworthy. *Patmore, supra* at _____. In the context of a new trial, a defendant would be required to establish either the veracity of the witness’ recanted testimony or the falsity of the witness’ initial testimony. *Patmore, supra* at _____. The *Patmore* Court concluded that recanted testimony in both contexts—motions for new trial and motions to withdraw a plea—should be similarly viewed.

In *Patmore*, the defendant argued that the witness’ preliminary examination testimony against him was the result of coercion. He claimed that the witness was threatened with losing custody of her child if she did not testify against the defendant. The Court of Appeals reversed the trial court’s decision allowing the defendant to withdraw his plea because the defendant

“failed to prove by a preponderance of credible evidence that [the complainant]’s preliminary examination testimony was untruthful, particularly given [the police officer]’s preliminary examination testimony which clearly supported [the complainant]’s original description of the offense and defendant’s intent.” *Patmore, supra* at ____.

6.36 Motion to Suppress Evidence Seized Pursuant to a Defective Search Warrant

Insert the following case summary before Section 6.37 on page 87:

As adopted by the Michigan Supreme Court in *People v Goldston*, 470 Mich 523 (2004), “[t]he ‘good faith’ exception [to the exclusionary rule] renders evidence seized pursuant to an invalid search warrant admissible as substantive evidence in criminal proceedings where the police acted in reasonable reliance on a presumptively valid search warrant that was later declared invalid [internal citation omitted].” *People v Hellstrom*, ___ Mich App ___, ___ (2004). Without deciding whether the search warrant in *Hellstrom* was valid, the Court of Appeals applied the good-faith exception to evidence seized by police officers pursuant to a warrant based on a magistrate’s probable cause determination. *Hellstrom, supra* at ___.

In *Hellstrom*, two minor females accused the defendant of sexually assaulting them in the defendant’s home. On the basis of these allegations and an officer’s experience that suspects accused of assaulting young females “use [] pornography for sexual gratification” and “are known to have items of sexual gratification inside their homes, computers and other devices,” the police officer obtained a search warrant for the defendant’s home. *Hellstrom, supra* at ___. The warrant described with particularity the place to be searched and the items to be seized if discovered during the search. The defendant argued that the search warrant was invalid because (1) it was not based on probable cause and (2) it was a “general” warrant that failed to fetter the police officers’ discretion in seizing evidence. *Hellstrom, supra* at ___.

The *Hellstrom* Court affirmed the trial court’s denial of the defendant’s motion to suppress, not for the trial court’s expressed reason—that the warrant was supported by probable cause and was not overly broad—but because the purpose of the exclusionary rule would not be furthered by excluding evidence obtained by a police officer’s objectively reasonable reliance on the validity of the warrant. *Hellstrom, supra* at ___. The Court concluded

“that the officers conducting the search of defendant’s home acted in good-faith reliance on the magistrate’s probable cause and technical sufficiency determinations regarding the search warrants. The supporting affidavits were not ‘so lacking in indicia of probable cause’ as to say that the officers could not objectively believe that the warrant was supported by probable cause. And there is no reason to believe the facts alleged in the affidavit were false or that the magistrate was misled by false information. Also, although there were no allegations in the affidavit that defendant had videotaped or taken pictures of the complainants, it did assert that the crimes happened in defendant’s residence. Given the affiant’s knowledge that pedophiles generally possess pornographic images for sexual gratification, it was not ‘entirely unreasonable’ to believe that evidence of a crime would be found

in defendant's home, whether it be images taken of the complainants without their knowledge or possession of other material that would constitute child pornography [internal citations and footnote omitted]." *Hellstrom, supra* at ____.

6.37 Motion to Suppress Evidence Seized Without a Search Warrant

2. Searches Incident to Valid Arrest

Insert the following text near the bottom of page 90, immediately before the beginning of subsection 3:

Evidence was properly seized and admitted at trial against the defendant when it was discovered during a police officer's lawful investigatory detention of the defendant. *People v Dunbar*, ___ Mich App ___, ___ (2004). In *Dunbar*, a police officer was justified in stopping the defendant based on information received from a reliable confidential informant. During the investigatory stop, the officer discovered and seized one bag of marijuana and one bag of crack cocaine defendant held in his left hand when he complied with the officer's order to remove his hand from his pocket. *Dunbar, supra* at ___.

An investigatory stop, as in *Terry*, may be justified by an unverified tip from a known informant. *Dunbar, supra* at ___. In *Dunbar*, the investigatory stop was based on information given to a police officer that the defendant possessed cocaine. The police officer testified to three previous occasions on which the informant's information had been reliable. The officer found the defendant at the location the informant provided and observed the informant and the defendant together at that location before stopping the defendant. According to the *Dunbar* Court:

“[W]hen an investigatory stop is based, at least in part, on information from an informant, the critical inquiry remains whether the officer's suspicion was reasonable when considered in light of the totality of circumstances. [Internal citation omitted.]

* * *

“Based on these facts, we find that the trial court did not clearly err in concluding that there was sufficient indicia of reliability to provide the police with reasonable suspicion that defendant had just been involved in criminal activity, which justified the forcible stop.” *Dunbar, supra* at ___.